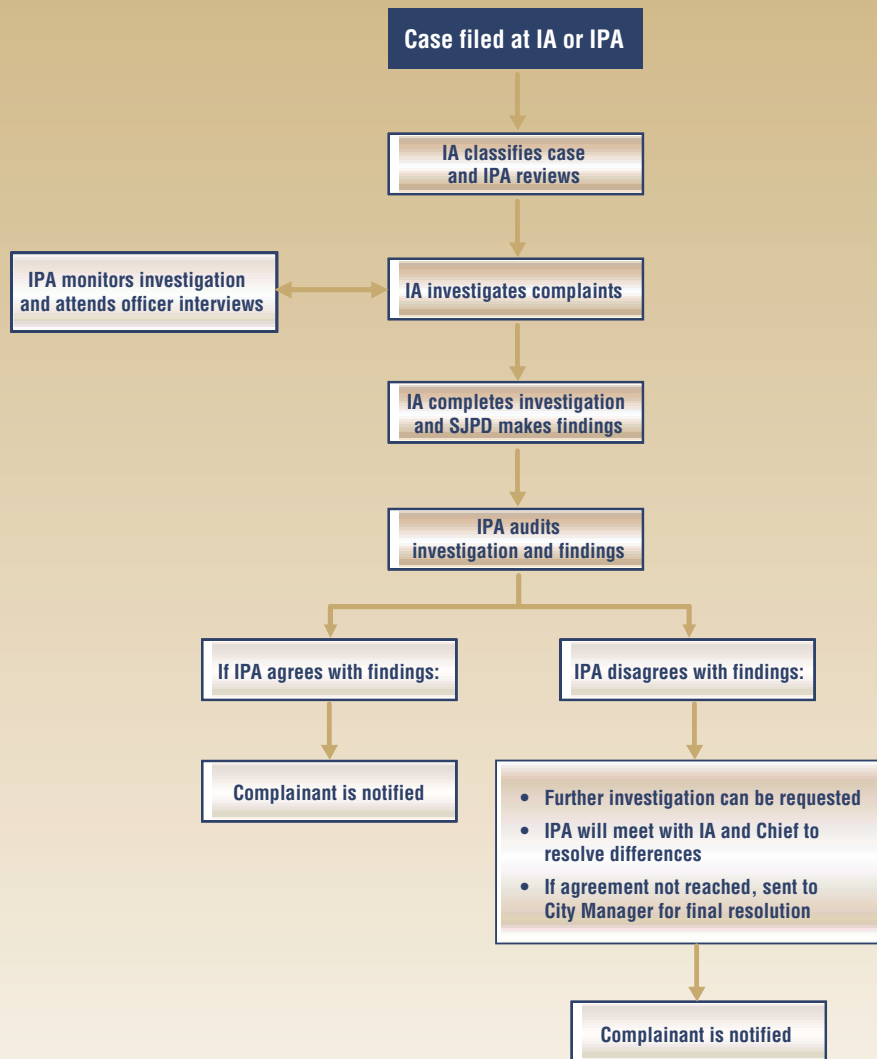


THE COMPLAINT PROCESS AND YEAR END STATISTICS

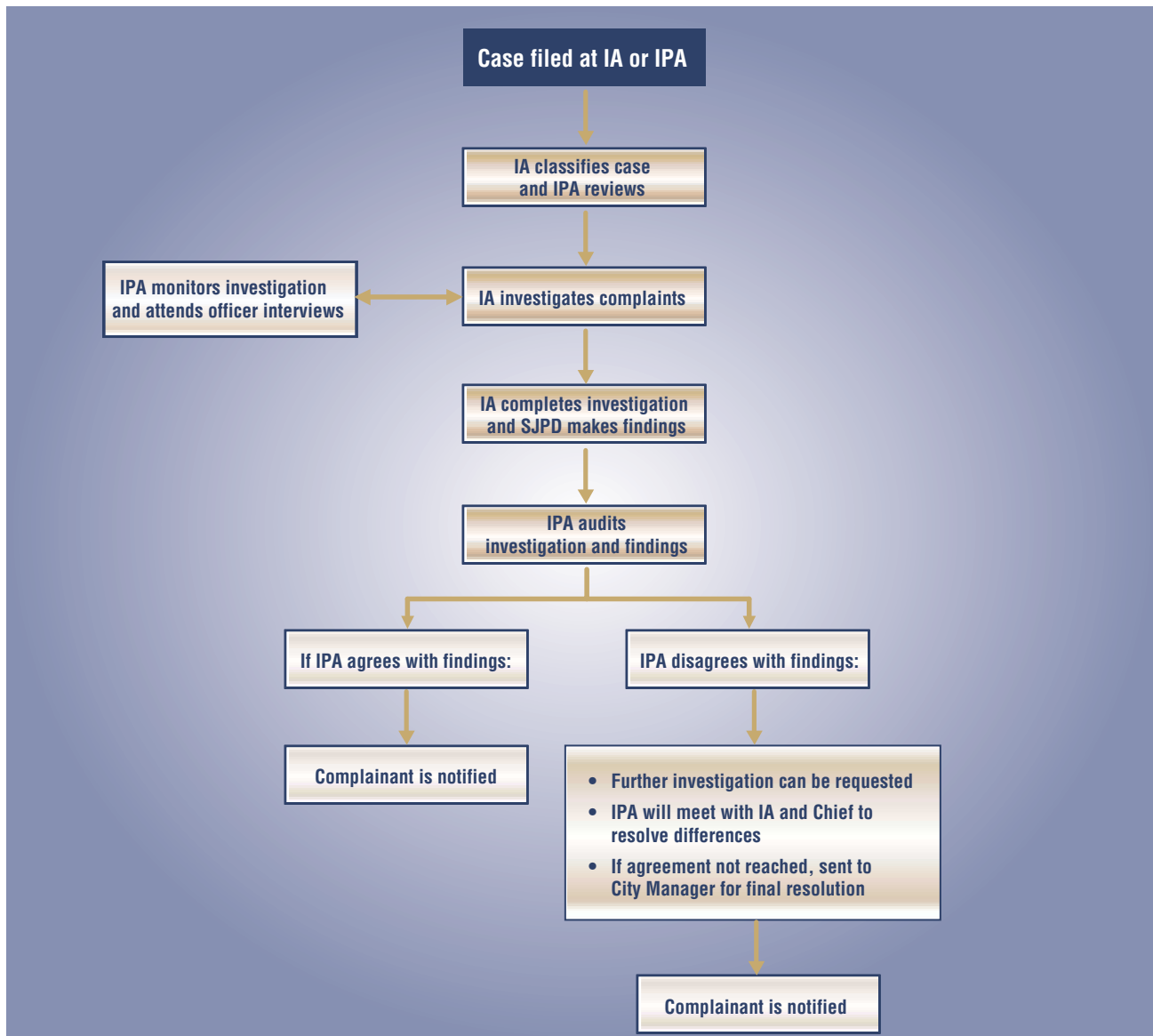
Chapter Six



This chapter describes the complaint process and provides statistical information about the different types of cases received in 2002 by both the Office of the Independent Police Auditor (IPA) and the Internal Affairs Unit (IA) of the San José Police Department (SJPD). It also provides information about the allegations made in the cases filed, the investigation findings, and the discipline imposed for sustained cases. The analysis is only statistical and should not be used to deduce specific and/or conclusive results from the data.

I. How the Complaint Process Works:

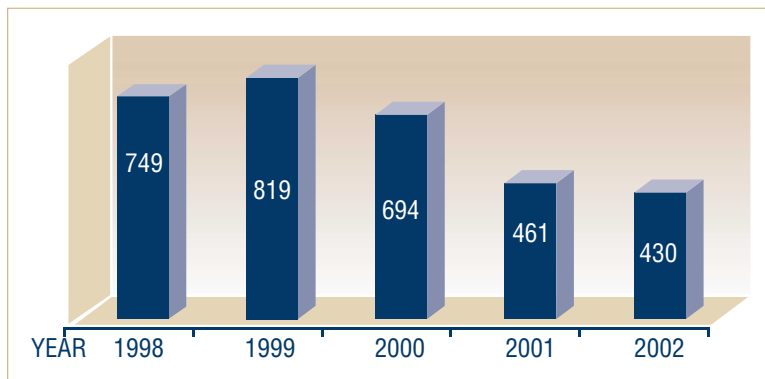
The following flowchart provides the main steps involved in the complaint process after a person contacts either the Independent Police Auditor's office or the Internal Affairs Unit to file a complaint.



A. Case Filed

Members of the public can file complaints against SJPd officers with either IA or the IPA. Complaints can be filed in person, on the telephone, or in writing via regular mail or email. Complaints may even be filed anonymously. Although the IPA and IA are separate offices, case information is entered in a shared database that ensures coordination between the two offices and safeguards against under reporting.

Illustration A: Five Years View of Total Cases Filed



All contacts from the public are documented as cases. As indicated in Illustration A there was a total of 430 cases filed in 2002 at the IPA and IA offices combined which is a slight decrease from the 461 cases filed in 2001. While this decrease is not as large as it has been in the previous two years, it still continues a trend that began after 1999 when the total number of cases reached its highest point of 819. While this trend can be attributed in part to SJPd efforts to improve police services both in response to IPA recommendations and police department initiatives, there are other factors that have also contributed to the downward trend in cases. As a result of a change in SJPd procedures, many complaints are now addressed at the scene by a supervising Sergeant or handled informally by the Chief's office. Previously, these complaints would probably have been filed either at the IA or IPA office and recorded as case intakes. Also, the downward trend

in IPA case intakes can be attributed in part to the move of its offices at the end of the year 2000. Unfortunately, the IPA was forced to change its telephone number and the phone company failed to maintain a recorded message informing callers of the IPA's new number.

B. Classification of Cases:

After a case is received, Internal Affairs determines whether or not an investigation is necessary. IA will classify the case as either a "Formal," "Command Review¹," "Policy²" or "Procedural³" complaint. A complaint is defined as "an act of expressed dissatisfaction, which relates to department operations, personnel conduct, or unlawful acts.⁴" The IPA reviews the classification to ensure the complaint receives the appropriate level of review. Cases not requiring investigation because they are resolved before they become a complaint are classified as an "Inquiry⁵." "Citizen Contact" cases are informational or do not pertain to a SJPd officer. Additional information concerning Case classification is provided in Appendix A.



Complaint Intake at IPA office.

Illustration B: Type of Complaints Filed

Type of Complaints	IPA Intake	IA Intake Complaints	Total
Formal:Citizen-Initiated Complaints	24	73	97
Formal:Department-Initiated Complaints	0	44	44
Command Review Complaints	15	26	41
Procedural Complaints	12	37	49
Policy Complaints	1	0	1
Total Complaints in 2002	52	180	232

This table reflects the number of different types of complaints received by both the IPA and IA in 2002. The 232 total complaints received in 2002 is slightly lower than the 258 total complaints received in 2001. This slight decrease is consistent with the decrease in the overall number of cases received in 2002 as compared to 2001.

Cases are classified differently for several purposes, including the following:

1. It makes the investigative process more efficient by identifying cases that do not require a full investigation so they can be resolved more quickly while providing an adequate amount of time to investigate the more complex cases;
2. Tracking complaints by officers' names as part of an "Early Warning" system that identifies those officers qualifying for Intervention Counseling;
3. Complying with motions for discovery in criminal and civil proceedings; and
4. Identifying patterns or trends so that recommendations can be made to change an existing policy or procedure.

C. Investigation of Complaints:

IA conducts administrative investigations that can, if sustained by the department, result in discipline being imposed on the subject officer. In certain cases, a criminal investigation could be conducted by the SJPD

prior to or at the same time as the IA investigation. Generally, IA investigates most allegations involving officer misconduct. Since IA investigators are fact finders only, they do not sustain complaints nor do they recommend discipline.

In cases where the IA investigator concludes that the investigation may support sustainable allegations, the investigation is sent to the subject officer's chain of command. The commanding officer reviews the investigation completed by the IA investigator and may conduct further investigation to determine if the complaint should be sustained or not. In cases involving significant misconduct, the case may be sent to the Disciplinary Review Panel to assist the Chief of Police in determining the appropriate level of discipline.

To ensure that investigations of misconduct complaints against San José police officers are done thoroughly, objectively and fairly, the IPA monitors and reviews all stages of the complaint process from intake through final disposition of the complaint. One of the most critical stages of the investigation of Formal complaints is to ensure that officers accused of misconduct are interviewed objectively and thoroughly. The IPA participates directly in many of the officer interviews to ensure that this goal is achieved. By agreement

with IA, the IPA is notified of all officer interviews in Formal complaints involving an allegation of unnecessary force, Formal complaints that were initiated at the IPA and other Formal complaints requested by the IPA. The audits conducted on the 88 Formal complaints in 2002 indicated that the IPA attended and monitored 38 officer interviews conducted in these cases.

D. Audit of Complaints

Once an investigation is completed, a copy of the investigation report is sent to the IPA for auditing. The IPA then has two weeks to review the investigation report and determine either that it agrees with the IA findings or that there are areas of concern, in which case, the IA commander is notified and the two-week time line is stayed. Notifications and/or closing letters are held until the area of concern is satisfied, or the case is reopened for further investigation. If the IPA makes no request during the two-week period, IA proceeds with sending the closing letters/notices to the complainant and subject officer.

Gathering data, monitoring, and auditing investigations to ensure the highest level of quality are of great importance. With this in mind, the IPA developed and employs a checklist for the collection of data and a process for evaluating the quality of the investigations to insure that the data was captured consistently. The objective is to maximize the availability of data entered and secured in the IPA's computer databases.

This process allows for consistency between auditors and provides a database that can be manipulated and randomly searched for critical trends and patterns. The database is designed to highlight the critical elements, actions, and aspects of an investigation, providing the IPA with the

capability to capture the trends and patterns. The database was also designed to capture the nature of the complaint, which is a significant capability, by using different auditing criteria for the different complaint classifications: Formal, Procedural, No Boland, Command Review, Policy, and Inquiry. While every complaint is important, this section provides a synopsis of the Formal complaint audits only because of their heightened severity.

In 2002, the IPA audited 88 Formal complaints. It should be noted that the 88 Formal complaints represent the number of investigations completed by IA and audited by the IPA in 2002. This total will differ from the total number of Formal complaints filed in 2002 because some complaints audited in 2002 were filed in 2001 and completed in 2002, while others that were filed in 2002 may still be under investigation.

Illustration C: IPA Request For Further Action

Formal Complaints	Cases Audited	%
Further Action Requested	21	24%
No Further Action Requested	67	76%
Total Cases Audited	88	100%

The IPA requested further action from IA in 21, or 24%, of the Formal cases it reviewed. Requests varied from reopening an investigation to providing the IPA with additional information or documentation. These requests are an important part of the audit process and help to ensure that IA investigations are thorough and objective. In order to make this determination, the auditor closely examines all the evidence developed in the investigation, often reviewing interview recordings, the scene of the incident and any physical evidence.

E. Did the IPA Agree with the Finding of the Complaint?

After a complaint investigation is audited, the IPA determines whether it agrees or disagrees with the findings of the SJPd. If the IPA raises an issue of disagreement, the issue is discussed first with the IA Commander. Many disagreements are often worked out informally at this point. If the IPA and IA are unable to resolve their differences the IPA presents the issue to the Chief of Police in a formal memorandum. If the IPA is still unable to resolve its disagreement with the Chief, the matter is submitted to the City Manager for final resolution.

Illustration D shows the number of times the IPA ultimately agreed or disagreed with the resolution of the complaint. The IPA disagreed with the finding of the investigation in seven, or 8%, of the 88 Formal cases audited in 2002. In 2001, the IPA disagreed with the department's finding in 5% of the Formal cases.

Illustration D: Disagreed Complaints

Formal Complaints	Cases Audited	%
Agreed	81	92%
Disagreed	7	8%
Total Cases Audited	88	100%

Even though the IPA may disagree with a complaint resolution for a number of reasons, in most cases where there has been a disagreement with the SJPd, weight given to the credibility of witnesses appears to have been the difference.

F. DISAGREED CASES BY THE IPA:

1 Case One

The complainant, a high school student, alleged that three officers working secondary employment at his school were rude to him when they questioned him about a school rule violation. He also alleged that one of the officers used unnecessary force by pushing him back into his chair. The IPA agreed with the findings for these allegations, but during the course of the investigation it was determined that none of the officers had valid secondary employment work permits as required by departmental regulations. However, IA did not include a sustained allegation for Improper Procedure in this complaint. The IPA disagreed with this part of the finding.

2 Case Two

The complainant alleged that two officers misunderstood what was occurring during a domestic disturbance at his home and should not have arrested him as he was not the aggressor. He also alleged that the officers used unnecessary force when they arrested him. There was a dispute of fact as to the type and amount of force initially utilized by the officers to affect the arrest of the complainant. The SJPd finding was to exonerate the officers on all allegations. For the unnecessary use of force allegation, the SJPd relied upon the statement of an independent witness they believed corroborated the statements of the officers. However, upon further review, the IPA determined that this witness did not corroborate the statements of the officers and that the investigating officers had misinter-

preted her statement. Without the support of this witness, the IPA believed that there was insufficient evidence to either prove or disprove the allegations of misconduct and, therefore, the finding should have been “Not Sustained” instead of “Exonerated.”

3 Case Three

The complainants alleged that when an officer stopped them for crossing a street, outside of a crosswalk, he yelled at them rudely. The complainants also alleged that when they asked the officer for his name and badge number, the officer pointed to his badge and nametag and said, "here, here". The officer refused to loan the complainants a pen to write down his name or badge number.

The IPA agreed with the “Not Sustained” finding for the Rude Conduct allegation, but disagreed with the finding for the Improper Procedure allegation. The IA investigation concluded that the officer did not comply with current policy, which requires that officers provide citizens with their name and badge number. Instead of sustaining the allegation, the IA bifurcated the complaint and had that allegation addressed by having the subject officer counseled by his supervisor. This is called a Command Review and is one of the options available in handling minor transgressions. The IPA recognizes that at times it is appropriate to address an officer’s actions in the least punitive manner, as is done under a Command Review. The subject officer in this case did not have prior complaints therefore, while the IPA disagrees with the finding, it understands the rationale for the decision and opted not to appeal the finding to the City Manager.

4 Case Four

The complainant alleged that officers twisted his arms and handcuffed him for no reason and slammed his head down on the hood of his car. The complainant alleged that the officers asked him if they could search him and he replied "no" and the officers searched him despite his objection. The complainant asked for the names of the officers and they refused to provide them. The complainant alleges that the officers had no reason to contact him. The supervisor was called to the scene and the complainant was released.

The IPA disagreed with the finding in two of the four allegations. The IPA found that there should have been a separate allegation of Improper Procedure for the officers’ failure to properly identify themselves. This issue was covered in the investigation, but was omitted as a charged allegation. The IPA also disagreed with the Chain of Command’s finding of “Exonerated” for the use of force allegation because the investigation did not prove or disprove the complainant’s or the subject officer’s version of the facts. A Not Sustained finding is more appropriate for the Unnecessary Force allegation. Two of the four allegations were sustained therefore, the IPA did not appeal this case to the City Manager.

5 Case Five

The complainant alleged that the officers conducted an unlawful search of his home. The complainant that he did not give the officers permission to search his home and that they did not have a warrant or cause to search his home.

The IPA disagreed with the “Exonerated” finding by the Chain of Command because the evidence supports a “Sustained” finding for the unlawful search allegation against the subject officer. It is clear that the subject officer exceeded the scope of his protective sweep search when he searched a small package found in the complainant’s bedroom. The allegation of Improper Procedure was sustained by the Chain of Command because the subject officer did not include in the police report any information about the search of the home or the package. Since one of the allegations was sustained, the IPA did not appeal the case to the City Manager.

6 Case Six

The complainant alleged that when his vehicle was stopped by an officer, the officer was rude in telling him to “shut up” several times. The complainant also believed he was being harassed by the officers because he questioned the reason for being stopped and because there were four or five officers present during the stop.

While the IPA agrees with the IA finding concerning the justification for the vehicle stop, the IPA disagrees with the IA finding in this case because the investigation was not thorough since it did not interview the subject officer in order to address the allegation of rude conduct. Internal Affairs is currently re-examining this case.

7 Case Seven

The complainant alleged that the subject officer stopped her vehicle because he thought she made an illegal turn in front of him almost colliding with his vehicle. The complainant stated that the officer was very angry because of the near collision and this caused the officer to behave in a very rude, angry, and out of control manner. The subject officer is alleged to have used excessive force against a witness bystander who attempted to intervene. The subject officer denied behaving in this manner and stated that his use of force against the witness bystander was justified because the witness was interfering with his official duties. The complainant and witness were unknown to each other. They both described the subject officer’s behavior as extremely rude and out of control. They both stated that the officer pushed, choked and handcuffed the witness for no apparent reason.

The IPA disagreed with the findings of the IA investigation because the IPA found the complainant and witness’ version of the facts to be more consistent. The IPA appealed this case to the City Manager. The finding was not changed.

G. Sustained Rate:

Illustration E: Five Years View of Formal Cases Sustained

Period Received	Closed Cases		Sustained Cases		Sustained Rate		Combined Sustained Rate
	CI	DI	CI	DI	CI	DI	
2002	81	52	8	34	10%	65%	32%
2001	113	35	29	24	26%	69%	36%
2000	187	41	18	31	10%	76%	21%
1999	96	25	8	22	8%	88%	25%
1998	162	28	21	23	13%	82%	23%

In order for a complaint to be sustained, the SJPDP must determine that the investigation has produced a preponderance of evidence indicating that the alleged misconduct occurred. In 2002, 8 out of 81 closed Formal CI complaints were sustained, resulting in a 10% sustained rate, see Illustration E. This percentage is down from the 26% sustained rate achieved in 2001. By contrast, 34 out of the 52 Formal DI closed complaints were sustained or a 65% sustained rate. This rate is slightly less than the 69% sustained rate in the year 2001. It should be noted that DI complaints include both internal and external matters. An external matter is one that is filed by a citizen, while an internal matter is initiated by the Chief of Police and can involve any type of policy or procedural violation, including personnel issues such as tardiness, abuse of sick leave, etc. The combined sustained rate for Formal cases overall is 32%, which is a slight decrease from last year's combined sustained rate of 36%.

H. Discipline Imposed:

Of the 133 Formal complaints closed in 2002, discipline was imposed in 57 cases. (see Illustration F below) Discipline is only imposed when a Formal complaint is sustained. This type of complaint involves the most serious misconduct allegations and is either initiated by a citizen (Citizen-Initiated – CI complaints) or by the Chief of Police (Department-initiated – DI complaints). It is important to note that the IPA is involved only in reviewing the integrity of the complaint investigation and is not involved in the determination of the level or type of discipline to be imposed if a complaint is sustained.

Illustration F: Discipline Imposed on Closed Complaints

Discipline Imposed	CI	DI	Total	%
Training and/or Counseling	8	6	14	25%
Documented Oral Counseling (D.O.C.)	5	11	16	28%
Letter of Reprimand (L.O.R)	1	7	8	14%
Suspension	0	8	8	14%
Transfer	1	1	2	4%
Retired/Resigned	0	9	9	16%
Terminated	0	0	0	0%
Total Discipline Imposed	15	42	57	100%
%	26%	74%	100%	

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Illustration F lists the type of discipline by increased level of severity. Suspensions can vary from 10-hours to 160-hours depending on the extent of the sustained misconduct. If an officer retires from the department, an open investigation of any complaint against this officer is closed with “No Finding”. The retired category is not a disciplinary action, but rather it is included for the purpose of tracking the number of officers who retire while the completion of a citizen complaint investigation is pending.

An officer receives discipline based on the entire complaint and not based on each separate allegation. For example, an officer may have had three allegations sustained in one complaint, but he or she will receive only one discipline. Also, an officer may receive training and/or counseling, even though the allegation in a complaint is not sustained.

Illustration G - Type of Discipline Imposed by Allegation

Type of Discipline Imposed	Allegations									
	DH	F1	F2	FA	IP	MDP	RC	UA	UC	Total
Training and/or Counseling	0	0	0	0	7	1	4	0	2	14
Documented Oral Counseling (D.O.C.)	0	0	0	2	10	2	0	0	2	16
Letter of Reprimand (L.O.R)	0	0	0	1	5	0	0	0	2	8
Suspension	1	0	0	1	5	0	0	0	1	8
Retired/Resigned	1	0	0	0	4	0	0	0	4	9
Disciplinary Transfer	0	0	0	1	1	0	0	0	0	2
Terminated	0	0	0	0	0	0	0	0	0	0
Total Allegations	2	0	0	5	32	3	4	0	11	57

Illustration G matches the level and frequency of discipline by type of allegation. This illustration indicates that the misconduct allegations resulting in the most discipline are procedural or involve conduct unbecoming of an officer suggesting that more training may be helpful in these areas.

Illustration H: Five Year View of Type of Discipline Imposed

Type of Discipline Imposed	1998	1999	2000	2001	2002	Total	%
Training and/or Counseling	20	11	22	9	14	76	24
Documented Oral Counseling (D.O.C.)	23	15	35	21	16	110	35
Letter of Reprimand (L.O.R)	11	7	5	9	8	40	13
Suspension	14	16	3	13	8	54	17
Transfer	0	1	0	0	2	3	1
Retired/Resigned	8	2	3	2	9	24	8
Terminated	1	2	0	1	0	4	1
Total Discipline Imposed	77	54	68	55	57	311	100%
%	25%	17%	22%	18%	18%	100%	

Illustration H indicates that the types of discipline imposed most frequently in 2002 were Training and/or Counseling (14), Documented Oral Counseling (16), and Letter of Reprimand (8). This is consistent with the trend established during the previous four years from 1998 to 2001.

II. Supervisor's Intervention Program:

The Supervisor's Intervention Program (SIP) embraces the concept of the "Early Warning System" under which the Intervention Counseling Program was instituted. As part of this system, the SIP aims to assist supervisors in tracking complaint histories of their subordinates. This program enables supervisors to take a proactive approach by identifying trends and patterns of behavior in their teams, as well as develop risk management strategies. The following is the current criteria for the SIP:

This policy applies to Citizen and Department initiated complaints.

- When the team assigned to a supervisor receives three or more complaints within six months, IA informs the supervisor's chain of command that the supervisor meets the criteria to participate in the SIP. The supervisor's chain of command consists of the lieutenant up to the deputy chief.
- During the supervisor's intervention session, the subject supervisor meets with the aforementioned chain of command and the IA Commander.
- "Unfounded" cases are excluded from the SIP criteria.
- Officers working temporarily under another supervisor will track with the regularly assigned supervisor.
- When more than one officer is named in a complaint, it is counted as only one towards meeting the SIP criteria.
- This criteria applies to a six-month tracking period regardless of shift change. In other words, once a subordinate receives a complaint, the supervisor remains on the case even when he/she no longer supervises the named officer.

In 2002, seven supervisors qualified for counseling through this program.

End Notes

¹ San José Duty Manual, Section C1716, Command Review Complaint defined: It is determined that the allegation involves minor transgression that may be handled by bringing the matter to the attention of the subject member's supervisor and chain of command. The utilization of this process does not imply that the subject member has in fact committed the transgression as described by the complainant.

² San José Duty Manual, Section C1721, Policy Complaint defined: A complaint which pertains to an established policy, properly employed by a Department member, which the complainant understands but believes is inappropriate or not valid.

³ San José Duty Manual, Section C1711, Procedure Complaint defined: (A) After the initial investigation, it is determined that the subject member acted reasonably and within Department policy and procedure given the specific circumstances and the facts of the incident and that, despite the allegation of misconduct, there is no factual basis to support the allegation. (B) The allegation is a dispute-of-fact case wherein there is no independent information, evidence, or witnesses available to support the complaint, and there exists another judicial entity which is available to process the concerns of the complainant.

⁴ San José Duty Manual, Section C1703, Complaint defined: A complaint is an act of expressed dissatisfaction, which relates to Department operations, personnel conduct, or unlawful acts.

⁵ San José Duty Manual, Section C1703, Inquiry defined: Citizen contact with a Department member regarding an issue of concern that is immediately addressed and resolved to the satisfaction of the citizen. A concern that is not satisfactorily resolved can become a complaint.